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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 39 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

1. Whether Reporters of Local Papers may be allowed to see the judgements? - No.

2. To be referred to the Reporter or not? - No.

3. Whether Their Lordships wish to see the fair copy of the judgement? - No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?—No.

VIJAY MILLS COMPANY LIMITED

## Versus

COMMISSIONER OF INCOME TAX

### Appearance:

Mr.D.A. Mehta, Mr.B.R. Patel and Mr.B.D. Karia, for  
MR KC PATEL, for the Applicant.  
Mr.Bharat J. Shelat, Advocate,  
instructed by MR MANISH R BHATT for the Respondent.

CORAM : MR. JUSTICE B. K. ABICHANDANI and

MR.JUSTICE R.BALIA.

Date of decision: 30/01/97

ORAL JUDGEMENT

Following questions have been referred to this Court for its opinion at the instance of the assessee by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', in respect of the assessment for the assessment year 1975-'76 in the case of the assessee:-

1. " Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the appellant was not entitled to claim gratuity liability of Rs.13,69,493/- u/s. 28 read with Section 37 of the Income-tax Act, 1961?"
2. " Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the appellant was not entitled to claim guarantee commission of Rs.1,27,927/- under section 28 read with section 37 of the Act?"

It was candidly conceded by the learned counsel for the applicant that question No.1 stands concluded in favour of the Revenue in Shri Sajjan Mills Limited v. C.I.T., 156 ITR 585 and question No.2 also stands decided against the assessee by the Division Bench of this Court in CIT v. Vallabh Glass Works Ltd., 137 ITR 389. In view of the aforesaid, we answer both the questions in affirmative, i.e. to say, in favour of the Revenue and against the assessee. No order as to costs.

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(apj)